

**LAW OFFICES OF  
LOUIS E. GITOMER**

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 401  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

June 2, 2008

Honorable Anne K. Quinlan  
-Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

RE: Docket No. 42102, *Railroad Salvage & Restoration, Inc.* -Petition for  
*Declaratory Order—Reasonableness of Demurrage Charges*  
Docket No. 42103, *G F Wiedeman International, Inc.* -Petition for  
*Declaratory Order—Reasonableness of Demurrage Charges*

222492

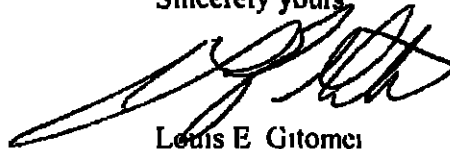
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Dear Acting Secretary Quinlan:

Enclosed for e-filing is the response of the Missouri & Northern Arkansas Railroad Company, Inc. to the Request for Extension of Time filed by Railroad Salvage & Restoration, Inc. and G F Wiedeman International, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for Missouri & Northern Arkansas  
Railroad Company, Inc.

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No 42102

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RAILROAD SALVAGE & RESTORATION, INC  
—PETITION FOR DECLARATORY ORDER —  
REASONABLENESS OF DEMURRAGE CHARGES

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Docket No 42103

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G F WIEDEMAN INTERNATIONAL, INC.  
—PETITION FOR DECLARATORY ORDER —  
REASONABLENESS OF DEMURRAGE CHARGES

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RESPONSE OF MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC  
TO REQUEST FOR EXTENSION OF TIME BY PETITIONERS

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Leean M Greenwald, Esq  
Vice President - Litigation Counsel  
RailAmerica, Inc.  
5300 Broken Sound Blvd , NW  
Boca Raton, Florida 33487  
(561) 226-1729  
Leean.Greenwald@RailAmerica.com

Louis E Gitomer, Esq  
Law Offices of Louis E Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532  
Lou\_Gitomer@verizon.net

Attorneys for MISSOURI & NORTHERN  
ARKANSAS RAILROAD  
COMPANY, INC

Dated June 2, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No 42102

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RAILROAD SALVAGE & RESTORATION, INC  
—PETITION FOR DECLARATORY ORDER—  
REASONABLENESS OF DEMURRAGE CHARGES

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Docket No 42103

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G F WIEDEMAN INTERNATIONAL, INC  
—PETITION FOR DECLARATORY ORDER—  
REASONABLENESS OF DEMURRAGE CHARGES

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RESPONSE OF MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC  
TO REQUEST FOR EXTENSION OF TIME BY PETITIONERS

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Missouri & Northern Arkansas Railroad Company, Inc ("M&NA") responds in opposition to the Request for Extension of Time filed on May 30, 2008 by Railroad Salvage & Restoration, Inc ("RS&R") and G F Wiedeman International, Inc ("GFWI"), jointly referred to as "Petitioners" (the "Extension Request")

Petitioners have requested an additional 30 days to file their opening statement and for the filing of the remainder of the pleadings in this proceeding. The basis for Petitioners' requested extension is "the time required for Petitioners' Consultant to analyze the voluminous documents furnished by Respondent in response to Petitioners' initial discovery request". Petitioners' Consultant is required to review all of those voluminous documents in conjunction

with several special studies being undertaken in defense of the demurrage charges at issue ”

, Extension Request at 1

### **ARGUMENT**

In consultation with Petitioners M&NA agreed to a one week extension, but not 30 days M&NA is still agreeable to a one week extension. However, Petitioners’ claim that their Consultant did not have access to the documents produced by M&NA in discovery is wrong. A review of the Discovery Submitted by Petitioners on March 28, 2008 (“Petitioners’ Discovery”), a copy of which is attached as Exhibit A, demonstrates that in the ordinary course of business Petitioners had received 1,492 pages of the 1,642 pages of documents produced in response to discovery. Indeed, M&NA was well within its rights not produce documents that were in Petitioners’ possession, but to avoid delay and needless cost, M&NA produced these documents that Petitioners should have retained in the ordinary course of business.

Petitioners filed 10 Requests for Production on M&NA. Of these 10 requests, eight were for documents “issued to” one of the Petitioners by M&NA. See Request for Production Nos. 1, 2, 3, 4, 5, 6, 9, and 10. In response to these eight Production Requests, M&NA produced 1,492 pages (including identifying information) that had been provided to Petitioners in the ordinary course of business. The other two document requests were for “for cars ordered by” one of the Petitioners. See Request for Production No. 7 and 8. In response to Production Request Nos. 7 and 8, M&NA produced 150 pages of car order information. Since Petitioners ordered the cars, they should have records of those orders.

Petitioners should, in the ordinary course of business, retain the information that they sought in 10 Requests for Production and make it readily available to their Counsel and

Consultant in preparing their case. The Board should not reward Petitioners' lack of diligence by granting them additional time to prepare their opening statement.

Not only were Petitioners not entitled to these documents in discovery and not only should they have given them to their Counsel and Consultant at the time or shortly after they sought to commence these declaratory order proceedings before the Board,<sup>1</sup> but they were well aware of the volume of documents that they were requesting from M&NA and that the M&NA would produce in discovery. From the time of initial production until the due date of Petitioners' opening statement is over seven weeks, surely enough time for the Consultant to conduct whatever study was necessary. Despite this knowledge, Petitioners have agreed to all schedules to date, and knew of the time that they would have to prepare their opening statements in these proceedings once discovery was concluded, and Petitioners also agreed to the date for the conclusion of discovery.

Petitioners have not paid any demurrage to M&NA on any of the cars in issue in these proceedings and have not paid demurrage to M&NA on any subsequently delayed rail cars. M&NA believes that Petitioners are attempting to use their own lack of diligence to further delay the payment of legitimate demurrage charges to M&NA, which now exceed \$500,000 (including those subject to these proceedings and those accrued since these proceedings began).

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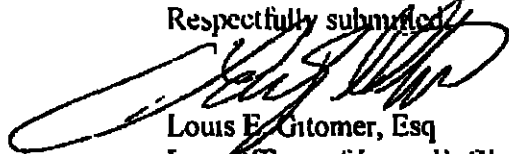
<sup>1</sup> On October 5, 2007, RSR filed a Petition for Declaratory Order in Docket NOR 42102, *Railroad Salvage & Restoration, Inc. –Petition for Declaratory Order—Reasonableness of Demurrage Charges*, and on October 29, 2007, GFW filed a Petition for Declaratory Order in Docket NOR 42103, *G F Wiedeman International, Inc. – Petition for Declaratory Order—Reasonableness of Demurrage Charges*.

## CONCLUSION

Petitioners have not justified an extension of more than one week to file their opening statement. Petitioners (1) should have had all of the documents that they sought in discovery in their own records, as they were previously provided by M&NA in the ordinary course of business; (2) should have provided these documents to their Counsel and Consultant in a timely manner, and (3) should have known the volume of documents that M&NA could produce because these documents had been provided to Petitioners in the ordinary course of business. M&NA respectfully requests the Board not to reward Petitioners for their lack of diligence and deny their 30-day extension request, and instead grant the one week extension agreed to by M&NA.

Leean M. Greenwald, Esq.  
Vice President - Litigation Counsel  
RailAmerica, Inc.  
5300 Broken Sound Blvd., NW  
Boca Raton, Florida 33487  
(561) 226-1729  
Leean.Greenwald@RailAmerica.com

Respectfully submitted,



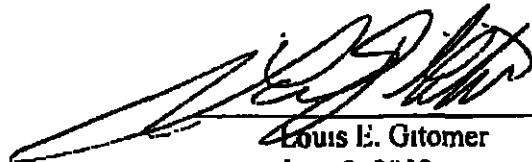
Louis F. Gitomer, Esq.  
Law Offices of Louis F. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532  
Lou\_Gitomer1@verizon.net

Attorneys for MISSOURI & NORTHERN  
ARKANSAS RAILROAD  
COMPANY, INC

Dated June 2, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing document to be served electronically on  
counsel for Railroad Storage & Restoration, Inc and G F Wiedeman International, Inc

  
\_\_\_\_\_  
Louis E. Gitomer  
June 2, 2008

**EXHIBIT A-DISCOVERY SUBMITTED BY PETITIONERS**



LAW OFFICE  
THOMAS F. MCFARLAND, P.C.  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

March 27, 2008

*By UPS overnight mail*

Louis E. Gitomer, Esq.  
600 Baltimore Avenue, Suite 301  
The Adams Building  
Towson, MD 21204-4022

Re Docket No. 42102, *Railroad Salvage & Restoration, Inc. -- Petition for  
Declaratory Order -- Reasonableness of Demurrage Charges*

Docket No. 42103, *G F Wiedeman International, Inc. -- Petition for  
Declaratory Order -- Reasonableness of Demurrage Charges*

Dear Lou

Herby transmitted is Discovery Submitted By Petitioners. Call me if you have any  
questions

Very truly yours,



Thomas F. McFarland  
*Attorney for Railroad Salvage  
& Restoration, Inc. and  
G F Wiedeman International, Inc.*

*Mail Mark v.p. 01262MtlEG1*

cc: Daniel Whitworth, Esq.  
Mr. G. W. Jackson

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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RAILROAD SALVAGE &	)	
RESTORATION, INC -- PETITION FOR	)	
DECLARATORY ORDER --	)	DOCKET NO 42102
REASONABLENESS OF DEMURRAGE	)	
CHARGES	)	
	)	
G F WIEDEMAN INTERNATIONAL,	)	
INC -- PETITION FOR	)	DOCKET NO 42103
DECLARATORY ORDER --	)	
REASONABLENESS OF DEMURRAGE	)	
CHARGES	)	

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**DISCOVERY SUBMITTED BY PETITIONERS**

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Pursuant to 49 C.F.R. Part 1114, Subpart B, Petitioners, RAILROAD SALVAGE & RESTORATION, INC and G F WIEDEMAN INTERNATIONAL, INC , hereby submit discovery to Respondent, MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. The discovery consists of Requests to Admit, Requests for Production of Documents, and Interrogatories. Pursuant to 49 C.F.R. § 1114.26(a), and 49 C.F.R. § 1114.27(a), responses to the discovery are to be provided no later than 15 days after submission of the discovery, i.e., by April 14, 2008.

**DEFINITIONS**

Terms used in this discovery have the following meaning

The abbreviation "MNA" means Respondent Missouri & Northern Arkansas Railroad Company, Inc.

The abbreviation "RSR" means Petitioner Railroad Salvage & Restoration, Inc.

The abbreviation "GFW" means Petitioner G F Wiedeman International, Inc

The term "demurrage period" means the 25-month period between January 1, 2005 and January 31, 2007, inclusive

The term "tariff" means the MNA tariff relied on as authority for collection of the demurrage charges involved in the Amended Complaints

The term "invoice" means the invoice by which the demurrage charges in the Amended Complaints were billed, including any amended invoice and/or corrected invoice submitted to RSR

The term "Cars-enroute-Form" means a listing of cars enroute to RSR and GFW that is and was sent to RSR and GFW on a daily basis

The term "Cars-placed-at-customer facility Form" means a listing of cars placed at the place of business of RSR and GFW that is and was sent to RSR and GFW on a daily basis

The term "Constructive Placement Notice" means a written form notifying RSR and GFW that railcars consigned to them were constructively placed by MNA because of RSR's or GFW's inability to receive them at its place of business

The term "Car-order Records" means documents that record the date and time on which RSR and GFW ordered railcars to be placed at their place of business

The term "document" as used herein means the original and any copy or non-identical copy of any writing, corporate memoranda, drafts, personal memoranda, personal notes, correspondence, telegram, e-mails and electronic or computer records and communications, telephone diary or other written matter. Also, it means all computer stored information, voice tapes, recordings and other electronic or mechanical methods of storing information. Where no

original or non-identical copies of a writing are available, it means copies of originals and copies of non-identical copies

The term "non-identical copies" means copies upon which there are writings, notations, cross-outs or other markings which make the copy non-identical to the original documents

**Identify**

- (A) With respect to a natural person, should include full names, title, job description, business and home address, and relationship with the involved damage charges
- (B) With respect to a business entity, it means its name, date and place of formation type of existence, whether corporate, partnership or proprietorship and also include its business address
- (C) With respect to a document, it includes title, date, author, addressee, recipients, subject matter or general nature, present location and custodian. This requires that you give the above information concerning a document irrespective whether the document is in your possession, custody or control or whether you claim the document to be privileged
- (D) With respect to an oral statement or communication, it includes the maker of the statement, the recipients, when the statement was made, the person present when made, the mode of communication and the subject matter

The term "communication" means the act of or fact of communicating. It includes any document delivered by a person or entity to a person or entity and any oral statement by one person or entity to another person or entity either in private or in the presence of third persons

The term "Parties" means each party to this litigation and each corporation, entity,

affiliate, subsidiary, agent, division and any corporation or individual who has a controlling interest in any party to this litigation

The term "Person" means an individual, corporation, partnership or association or any other business entity.

#### **Requests for Admission**

1 In accordance with MNA's tariff, demurrage charges are not to be assessed for detention of privately-owned railcars (i.e., car initials ending in X) on privately-owned tracks, i.e., between the dates of actual placement and release of such cars

2 In accordance with MNA's tariff, demurrage charges are not to be assessed for detention of railcars under constructive placement unless written or electronic constructive placement notices for such railcars are timely sent to the consignee of such railcars

3 MNA does not pay any car-hire charges when holding privately-owned railcars on MNA tracks (i.e., railcars having car initials ending in X).

4 During the demurrage period, a representative of RSR requested that MNA lease trackage to RSR as a means to eliminate or reduce assessment of demurrage charges on privately owned railcars leased by RSR, but MNA either refused that request or failed to respond to that request

#### **Interrogatories**

1 As to the following car numbers on the following invoices of demurrage charges dated June 5, 2006, issued to RSR, what is the explanation for the fact that more than one-day was excluded in the calculation of demurrage charges?

**Car No.**

[illegible]

MP 650547  
HS 10435  
MP 951185  
LW 66488  
ATSF 68044  
ATSF 74479  
CS 21065  
CW 6585  
ATSF 76329  
HS 10326  
MP 651295  
HS 10362  
HS 10226  
TR 526647  
HS 10227  
IR 526641  
CHT T 360226  
GNTX 295202  
GNTX 297144  
CHT T 360244  
TKEN 9992  
CHT T 360293  
CH I I 360204  
MP 651196  
CHT T 360361  
CNW 137028  
CNW 137247  
BN 560443  
IIS 10493  
TFM 55234  
TFM 60209  
MP 651257  
TFM 60288  
CHT T 360222  
CHT T 360239  
CH I I 287003  
CNW 375038  
SP 365195  
CHT T 287096  
CNW 128104  
MP 650691  
ATSF 74575

**Invoice No.**

DB 0602  
 DB 0602  
 DB 002947C  
 DB 002965C  
 DB 002965C  
 DB 002965C  
 DB 002965C  
 DB 002965C  
 DB 002965C  
 DB 002965C

**Car No.**

CHTT 287072  
 CHTT 360356  
 CHTT 360336  
 SP 323149  
 MP 642761  
 BNSF 516325  
 MP 951162  
 CHTT 287081  
 CHTI 360219  
 BNSF 516678

2 As to the following car numbers on the following invoices of demurrage charges dated June 5, 2006, issued to RSR, what is the explanation for MNA's willingness to waive collection of such charges, as communicated to a representative of RSR during a meeting held on or about June 6, 2006?

**Invoice No.**

DB 002773C  
 DB 002773C  
 DB 002791  
 DB 002791  
 DB 002828  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002854C  
 DB 002882C  
 DB 002882C  
 DB 002882C  
 DB 002897  
 DB 002897  
 DB 002897  
 DB 002897  
 DB 002913C  
 DB 002913C

**Car No.**

DGNO 481  
 TR 526647  
 TR 526641  
 UP 229926  
 MP 951106  
 SCRF 389  
 SCRF 402  
 MNA 445  
 CHTT 360369  
 GNTX 297103  
 NOKL 360091  
 SP 340526  
 TR 526641  
 CNW 137362  
 MP 650514  
 NOKL 360091  
 CHTT 360249  
 MP 650808  
 MP 650878  
 TFM 55234  
 CHIT 360222  
 CHTT 360239

<u>Invoice No.</u>	<u>Car No.</u>
DB 002913C	MP 650795
DB 002947C	GNTX 295201
DB 002947C	GNTX 297129
DB 002947C	GNTX 297180
DB 002947C	CHTT 287001
DB 002947C	GNTX 295092
DB 002947C	LW 66467
DB 002947C	MP 641229
DB 002947C	CHTT 360243
DB 002947C	CNW 340213
DB 002947C	MP 641263
DB 002965C	CNW 741029
DB 002965C	MP 642687
DB 002965C	SP 338027
DB 002965C	DRGW 340299
DB 002965C	HS 10493
DB 002965C	UP 152034
DB 002965C	GNTX 295160
DB 002983	GNTX 295278
DB 002983	GNTX 297195
DB 002983	CHTT 360204
DB 002983	CHTT 360229
DB 002983	CNW 137012
DB 002983	HS 10493
DB 002983	SP 365086
DB 002983	LW 66482
DB 002983	SP 323096

1. How many hours of car-hire per railcar was MNA permitted to reclaim against Union Pacific Railroad Company on UP-furnished railcars delivered to RSR or to CFW during the demurrage period?

4. (a) Was MNA requested by RSR at any time between January 1, 2005 and January 31, 2007 to lease track to RSR for storage of RSR's privately-owned railcars (i.e., railcars leased by RSR)?

(b) If so, what were the approximate dates of such requests?



(c) If so, what were MNA's responses to such requests?

5 (a) During the period between January 1, 2005 and January 31, 2007, inclusive, did MNA deliver railcars to RSR or GFW that were more newly arrived at MNA's yard than other railcars in MNA's yard at that time that were consigned to RSR or GFW?

(b) If so, identify all such railcars.

**Request for Production of Documents**

Please produce the following.

1 Copies of all "cars enroute forms" issued to RSR for the demurrage period between January 1, 2005 and August 31, 2006, inclusive, and for Car No 31103 in October, 2006

2 Copies of all "cars-enroute forms" issued to GFW for the demurrage period between September 1, 2006 and January 31, 2007, inclusive

3 Copies of all "cars-placed-at-customer-facility forms" issued to RSR for the demurrage period between January 1, 2005 and August 31, 2006, inclusive, and for Car No 31103 in October, 2006.

4 Copies of all "cars placed-at-customer-facility forms" issued to GFW for the demurrage period between September 1, 2006 and January 31, 2007, inclusive

5 Copies of all "constructive placement notices" issued to RSR for the demurrage period between January 1, 2005 and August 31, 2006, inclusive, and for Car No 31103 in October, 2006

6 Copies of all "constructive placement notices" issued to GFW for the demurrage period between September 1, 2006 and January 31, 2007, inclusive

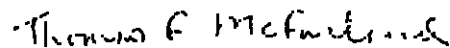
7 Copies of all "car-order records" for cars ordered by RSR to be placed at its facility during the demurrage period between January 1, 2005 and August 31, 2006, inclusive, and for Car No 31103 in October, 2006

8 Copies of all "car-order records" for cars ordered by GFW to be placed at its facility during the demurrage period between September 1, 2006 and January 31, 2007, inclusive

9 Copies of all invoices for demurrage charges issued to RSR for the demurrage period between January 1, 2005 and August 31, 2006, inclusive, and for Car No 31103 in October, 2006 including any corrected or amended invoices

10 Copies of all invoices for demurrage charges issued to GFW for the demurrage period between September 1, 2006 and January 31, 2007, inclusive, including any corrected or amended invoices

Respectfully submitted,



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Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 S. LaSalle St., #1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@qaoi.com

Attorney for Petitioners

Dated March 27, 2008